

## **The complaint**

Mr G complains about the quality of a car he acquired through a hire purchase agreement financed by Secure Trust Bank PLC trading as Moneyway (Moneyway).

## **What happened**

In March 2023 Mr G acquired a used car using a hire purchase agreement from Moneyway.

Mr G said he noticed a noise from the vehicle on the day he picked it up, and the dealership sent him parts to have it fixed including a radio button and vehicle under tray.

I've seen evidence that Mr G reported issues with the car smoking and the diesel particulate filter (DPF) light being illuminated to the dealership in April 2023, and that repairs were approved in May 2023 including a replacement inlet manifold, software update and a DPF regeneration.

I've seen evidence that Mr G reported ongoing problems with the DPF and smoke from the vehicle to the dealership in June 2023, and repairs were completed including cleaning the DPF and replacing a sensor.

Mr G reported problems with the car going into limp mode (loss of power) to the dealership in September 2023, and an investigation was undertaken by a third party. That third party said they'd been unable to replicate the fault. Mr G said the car wasn't road tested for long.

Mr G complained to Moneyway about the problems he was experiencing with the vehicle, and they instructed an engineer to report on these concerns. The engineer said that whilst in automatic mode the vehicle didn't kickdown when the accelerator was depressed. They concluded that the transmission symptoms were associated with in-service wear to the transmission clutches. And, as Mr G had covered around 3,000 miles since acquiring the car, they said the car wasn't reasonably durable.

Moneyway sent Mr G their final response to his complaint in November 2023. They upheld Mr G's complaint on the basis of the engineer's report and said the dealership had agreed to repair the fault. Moneyway said they couldn't support the rejection of Mr G's car because the engineer didn't think the fault was present at the point of sale or linked to the previous repairs.

Unhappy with this, Mr G brought his complaint to this service. He said there had been numerous chances to fix the car, he wasn't happy about the number of issues it had, and he wanted to reject the car.

Our investigator asked Moneyway for their file for Mr G's complaint on a number of occasions between November 2023 and February 2024 and granted three requests from them to extend the deadline by which they could provide evidence. No further evidence was provided, and our investigator gave her view that the vehicle wasn't of satisfactory quality when it was supplied to Mr G on the basis of the engineer's report, and that he was now entitled to his final right to reject it.

She said Moneyway should end the agreement with nothing further for Mr G to pay, collect the vehicle, refund three of Mr G's normal monthly payments and pay him £200 compensation for the distress and inconvenience caused.

Moneyway didn't agree with our investigator and submitted the report by the first third party for consideration. They said there were no failed repair attempts, and the current fault was caused by natural wear, and so the vehicle was of satisfactory quality when it was supplied to Mr G.

Our investigator considered the evidence provided by Moneyway and said it didn't change her view because multiple attempts had been made to repair the vehicle and it remained faulty.

Moneyway didn't respond, and so the case has been passed to me for a decision.

Mr G said he'd like further consideration of the amounts to be refunded to him as his use of the car has been limited from day one, and he'll have to make further payments before an outcome is reached.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Moneyway as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £7,300. It was nearly eight years old and had travelled approximately 63,000 miles at the time of supply. When a person acquires a used car like Mr G's, it's reasonable to say that the expectation of quality is lower than that of a new or younger/lower mileage second-hand car. The price for the vehicle is lower, and this is reflective of the fact that the car is more road worn. The chance of encountering a serious issue sooner, is higher.

Moneyway have provided a report from a third party which couldn't replicate the fault with the loss of power. I've also seen the engineer report instructed by Moneyway which did locate a fault.

I'm persuaded by the engineer report – it's a comprehensive overview of the tests undertaken by an expert third party and clearly identifies a fault with the transmission of the vehicle. So, I am satisfied that there is an ongoing fault with the vehicle.

Moneyway say that the engineer concluded that the fault was due to in service wear, and so they're not responsible for it under the CRA. However, the report also concludes that the car wasn't reasonably durable, and I must consider that durability is also a factor when considering the satisfactory quality of a vehicle.

The engineer has detailed that in their opinion, repairs will be needed to the clutches within the transmission and an overhaul of the transmission actuator is required. Whilst clutch repairs might usually be the result of normal in-service wear, it's not clear here exactly what repairs will be required to fix the fault, only that the fault is with the vehicle's transmission.

I've seen no evidence that the vehicle was subject to poor maintenance, or any other evidence to dispute the findings of the engineer. So, on the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time it was supplied to Mr G.

Having made that finding, I need to decide what, if anything, Moneyway should do to put things right.

Moneyway originally accepted the findings of the engineer and agreed to repair the fault. Moneyway said there was no link between the earlier faults, and there have been no failed repairs to the vehicle, so Mr G can't reject it as he'd like to.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. A consumer has the final right to reject the goods if, after one repair, the goods do not conform to the contract.

So, that means that there is the right to repair the goods and return them to a satisfactory condition on one occasion. Not the right to repair on one occasion for every separate fault identified.

I'm persuaded that there's no link between the previous repairs and the current fault, but the goods remain in an unsatisfactory condition following an opportunity to repair them. So, all things considered, I think Mr G should be allowed his final right to reject the car.

### **Putting things right**

Moneyway should collect the car from Mr G, and the finance agreement should be brought to an end. Any adverse information concerning the agreement should be removed from Mr G's credit file.

Our investigator recommended that Moneyway refund three of Mr G's normal monthly payments for lack of use of the vehicle.

Mr G has had to return the vehicle for repairs on a number of occasions, and whilst he's continued to use it, he's told us that he had no choice due to work and family commitments but had used the car as little as possible.

Mr G has covered around 5,000 miles in the 11 or so months that he's had the car, so whilst Mr G has had use of the car, and I think it's fair that he pays for that use, I'm persuaded that he has used the car less as a result of it being unsatisfactory quality. It's not clear how long

Mr G's car was in the garage for repairs based on the evidence, but I'm persuaded that he's needed to return the car on at least three separate occasions for repairs to be completed and hasn't had use of it during these repairs. All things considered, I think it's fair and reasonable for Moneyway to refund three of Mr G's normal monthly payments, a total of £627.63, to reflect this loss of use.

Mr G has been put to distress and inconvenience in being supplied with a car that wasn't of satisfactory quality. He had to contact the dealership on a number of occasions and arrange for repairs to be completed and found it difficult to meet commitments to his family with the faulty car. Our investigator recommended that Moneyway pay Mr G £200 compensation. Overall, I'm satisfied that this fairly compensates Mr G for the distress and inconvenience that he's experienced.

### **My final decision**

My final decision is that I uphold this complaint and to settle matters, Secure Trust Bank PLC trading as Moneyway must:

- End the agreement and collect the vehicle at no further cost to Mr G
- Refund £627.63 to Mr G to reflect the loss of use plus 8% simple yearly interest from the date of payment to the date of settlement
- Pay Mr G £200 compensation
- Remove any adverse information from Mr G's credit file

If Moneyway considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 April 2024.

Zoe Merriman  
**Ombudsman**